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SUBJECT: BOSNIA: BRCKO WORKING GROUP AGREES ON WAY FORWARD

REF: SARAJEVO 01197

Classified By: AMBASSADOR DOUGLAS MCELHANEY FOR REASONS 1.4 (B), (D)

11. (U) SUMMARY. On June 20-21 the Ambassador convened the second meeting of the Brcko District Working Group, aimed at establishing political and legal mechanisms to regularize Brcko's status in relation to the state institutions of Bosnia and Herzegovina (BiH). Representatives came from the Council of Ministers, the Brcko District Office in Sarajevo, the Brcko Final Award Office and the Office of the High Representative. Although the Council of Ministers sent a representative who could not negotiate directly on the Prime Minister's behalf, the Working Group agreed on a way forward in the near term. The group focused on a set of mechanisms that would be achievable before the October elections, rather than on constitutional amendments that are politically unrealistic at this time. They agreed that an action plan was needed and committed to drafting a new national law addressing Brcko's legal relationship with state institutions. PM Terzic, in a separate meeting with the Ambassador, pledged his full support to the process. END SUMMARY.

12. (SBU) The Brcko District Working Group, with representatives from the Council of Ministers (COM), the Brcko District Office (BDO) in Sarajevo, the Brcko District Final Award Office (BFAO), the Office of the High Representative (OHR) and the Embassy convened June 20-21. Assistant Legal Adviser Josh Dorosin facilitated the talks. The Working Group, established when Brcko Mayor Djapo and Prime Minister Terzic signed a pledge to the Secretary during Dayton Anniversary events in Washington, is a U.S. led process to assist in clarifying the relationship between the Brcko District and BiH institutions in a manner that will ensure appropriate representation for the Brcko District in state-level institutions, and that will allow the terms of the Final Award to be met so that the international supervisory regime may be ended. As in the first round in February, the Working Group sought to identify political and legal mechanisms which would ensure appropriate representation for the Brcko District in state level decision making bodies.

SLOW PROGRESS SINCE LAST WORKING GROUP

13. (SBU) Brcko District officials reported that, as per agreement in February, the Brcko District Office in Sarajevo had been established to increase cooperation between the state and Brcko District and that some progress was being

made in addressing issues of interest to Brcko. However, the BDO reported it has little support from the COM. The BDO has proposed draft statutory language to legally enshrine the BDO in the COM by amending the Law on the Council of Ministers. To date it has received no response from the COM. Parties also reported little progress since the May 25 meeting with the Ambassador toward naming liaisons between Parliament and the Brcko District Office, or improving Brcko's relationship with Parliament's Constitutional and Legal Affairs Committee and the Finance Committee (reftel).

WHAT BRCKO WANTS

¶4. (SBU) Brcko District officials offered concrete examples of their lack of participation and authority in current state structures. Brcko District wants voting rights in all state level bodies, and most crucially, in fiscal, financial and property decision making structures. For example, Brcko has been granted observer status in the Indirect Taxation Authority and the National Fiscal Council's Governing Board, but has no control over the decision-making processes of either body. (NOTE: A more detailed report on problems within the ITA and NFC will follow septel.) Brcko is not mentioned in the BiH Constitution, and therefore cannot access the Constitutional Court or other legal remedies. Brcko District also seeks representation in Parliament, including participation in the Constitutional and Legal Affairs Committee and the Finance Committee, as well as parliamentary voting rights.

CONSENSUS ON A WAY FORWARD

¶5. (SBU) The parties agreed that constitutional amendments

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would be the ideal legal remedy to address these issues. However, they also recognized that this is likely unachievable in advance of upcoming national elections in October. Drafting a national law to address Brcko's immediate concerns, with the intent of lobbying for constitutional changes post-election, is the politically realistic way to proceed, all agreed. At Dorosin's suggestion, the group agreed to elements of a draft action plan. The action plan (drafted by Dorosin and currently in circulation among the Working Group) summarizes the mechanisms the group agreed upon to further integrate Brcko District into key BiH executive and parliamentary structures. The action plan also lays out a way forward for establishing a new law on the status of Brcko District, which the Working Group aims to draft by the end of August.

¶6. (C) COMMENT. Overall, the meeting was constructive and pragmatic. OHR played a useful role and has pledged support and leadership on the more technical aspects of drafting a national law. However, it is clear that there are still critical points of contention between the Brcko Final Award Office and OHR Headquarters. The BFAO continues to assert that the Final Award will be violated if Brcko District is not given the right to consent to future and past transfers of competencies. BFAO also maintains that Brcko should carry veto rights in state-level structures where voting members, acting on behalf of the entities, could together pass measures that would go against Brcko's interests. OHR Headquarters still asserts that this interpretation of the right to consent makes Brcko a de facto third entity, and is therefore unacceptable. While these divergent views may not prevent drafting of the national law from going forward, they likely will need to be resolved before parties can agree on constitutional language.

¶7. (C) COMMENT, CONT. Hands-on USG involvement will remain key in driving this process forward. The upcoming electoral season promises to be mean and divisive, and a national law on Brcko District could become a political football. The law is a modest goal, but the USG and others will have to lobby hard to push it through in advance of the October elections.

High level support from the Council of Ministers will also be essential. Prime Minister Terzic subsequently told the Ambassador and visiting SCE Director English that he would fully support the Action Plan, and expressed his belief that a national law was key to resolving many of the issues between Brcko and the state. Ambassador and English pointedly noted that failing to send an appropriately empowered representative to the Working Group meeting had sent a poor signal of the PM's commitment. We will need to maintain pressure for high-level public support from the Prime Minister, as well as increased COM engagement on the working level to move this process forward. END COMMENT.

18. (U) This cable has been cleared by Josh Dorosin.
MCELHANEY